



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0838]

RIN 1625-AA00

Temporary Safety Zone for Explosive Dredging; Tongass Narrows, Ketchikan, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Tongass Narrows. This action is necessary to provide for the safety of life on all navigable waters of the Tongass Narrows, from shoreline to shoreline, within a 500-yard radius of the Pinnacle Rock before, during, and after the scheduled operation between December 16, 2019 and January 31, 2020. This temporary final rule prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Southeast Alaska or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through January 31, 2020. For the purposes of enforcement, actual notice will be used from December 16, 2019 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type **USCG-2019-0838** in the “SEARCH”

box, and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Jesse Collins, Sector Juneau Waterways Management Division, U.S. Coast Guard; telephone 907-463-2846, email Jesse.O.Collins@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Southeast Alaska
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

Contract Drilling & Blasting LLC notified the Coast Guard that it will be conducting explosive dredging from 30 minutes after sunrise to one hour before sunset between December 16, 2019 and January 31, 2020. The operation will take place approximately 300 yards southwest of Berth II in Ketchikan, AK. Hazards from explosive dredging include concussive forces. The COTP has determined that potential hazards associated with the explosives to be used in this operation would be a safety concern for anyone above the water's surface within a 500-yard radius of Pinnacle Rock (located at approximately latitude 55°20'37" N, longitude 131°38'96" W).

In response, on November 22, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Temporary Safety Zone for Explosive Dredging, Tongass Narrows, Ketchikan, AK" (84 FR 64445). There we stated why we issued the

NPRM, and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended December 9, 2019, we received eight comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to protect the public from the potential safety hazards associated with the explosive dredging operation, which is scheduled to begin on December 16, 2019.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the explosives to be used in this operation would be a safety concern for anyone above the water's surface within a 500-yard radius of Pinnacle Rock (located at approximately latitude 55°20'37" N, longitude 131°38'96" W). The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters of the Tongass Narrows, from shoreline to shoreline, within a 500-yard radius of Pinnacle Rock before, during, and after the scheduled operation December 16, 2019 and January 31, 2020.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received eight comments on our NPRM published on November 22, 2019. Five comments were supportive. Three comments raised concerns regarding the operation's affect on marine wildlife. We considered these comments and believe the City of Ketchikan has a sufficient and comprehensive plan to protect marine wildlife from harm; the city will employ mitigation measures to include having three

dedicated, full-time Protected Species Observers to monitor the area and will have designated shut down zones where operations will cease if Alaskan marine mammals are observed. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 30 minutes after sunrise to one hour before sunset between December 16, 2019 and January 31, 2020. The safety zone would cover all navigable waters within 500 yards of Pinnacle Rock during explosive dredging operations in the Tongass Narrows located approximately 300 yards southwest of Berth II in Ketchikan, AK. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the daily 35-minute period of explosive dredging. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has

not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, time-of-day and time-of-year of the safety zone. Vessel traffic would be able to safely transit around this safety zone, south of Pennock Island, which would impact a small designated area of the Tongass Narrows for less than one hour per day when Contract Drilling & Blasting LLC would decide to detonate the explosives. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction

and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than an hour daily for 47 days that would prohibit entry within 500 yards of an explosive dredging operation in the Tongass Narrows. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see

the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165— REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T17-0838 to read as follows:

§ 165.T17-0838 Safety Zone for Explosive Dredging Operations; Tongass Narrows, Ketchikan, AK.

(a) Location. The following area is a safety zone: All navigable waters of the Tongass Narrows, from shoreline to shoreline, within a 500-yard radius of Pinnacle Rock (located at approximately latitude 55°20'37" N, longitude 131°38'96" W) before, during,

and after the scheduled operation between December 16, 2019 and January 31, 2020.

(b) Definitions. As used in this section:

(1) Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Juneau.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Southeast Alaska to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative by telephone at 907-463-2980 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement officials. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement. This safety zone may be enforced during the period described in paragraph (f) of this section. Contract Drilling & Blasting LLC will have two safety vessels on-scene near the location described in paragraph (a) of this section.

(f) Enforcement period. This section may be enforced from 30 minutes after sunrise to one hour before sunset between December 16, 2019, and January 31, 2020, during explosive dredging operations by Contract Drilling & Blasting LLC.

Dated: December 10, 2019.

Stephen R. White,
Captain, U.S. Coast Guard,
Captain of the Port Southeast Alaska.

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